L. REV. 583. Thus a mortgagee to protect his own interest may pay off a prior incumbrance and hold the mortgagor liable for the amount. *Hogg* v. *Longstreth*, 97 Pa. St. 255; *Milburn* v. *Phillips*, 143 Ind. 93, 42 N. E. 461; *Bowen* v. *Gilbert*, 122 Ia. 448, 98 N. W. 273. In the principal case the husband was legally bound to pay the amount himself, and thus the wife could clearly have a lien on any interest of his. But to repay her the full amount out of the trust fund would practically allow her to force the trustees to pay the premiums and deprive them of their discretion. *In re Waugh's Trusts*, 46 L. J. Ch. 629. See *In re Leslie*, L. R. 23 Ch. D. 552, 560, 561. But if a life tenant pays off an incumbrance, he may enforce contribution from the remainderman. *Downing* v. *Hartshorn*, 69 Neb. 364, 95 N. W. 801; *Whitney* v. *Salter*, 36 Minn. 103, 30 N. W. 755; *Jones* v. *Gilbert*, 135 Ill. 27, 25 N. E. 566. See *In re Leslie*, L. R. 23 Ch. D. 552, 565. Thus, as the wife acted under a strong moral compulsion to protect the interests of her child, on equitable principles she should be entitled to contribution from the remainderman for his proportionate share of the expenditure.

SALE OF FUTURE GOODS — BANKRUPTCY — POSSESSION BY VENDEE — PREFERENCE. — The defendant lent money to a partnership, with knowledge of its insolvency, under an agreement that the firm was to manufacture certain property to be his when completed. He took possession of such property within four months prior to the day on which a petition in bankruptcy was filed against the firm. The trustee in bankruptcy sues to recover the property as a voidable preference. *Held*, that he cannot recover. *Sieg* v. *Greene*, 225 Fed. 955 (C. C. A., 8th Circ.).

At one time it seemed that the rule of *Holroyd* v. *Marshall* would not afford protection to a mortgagee of future goods if he acquired possession within four months previous to the filing of a petition in bankruptcy against his mortgagor. *Matthews* v. *Hardt*, 9 Am. B. Rep. 373; *In re Ball*, 123 Fed. 164. See 18 HARV. L. REV. 606. But it is now clearly settled that the mortgagee is protected. *Thompson* v. *Fairbanks*, 196 U. S. 516; *Humphrey* v. *Tatman*, 198 U. S. 91. It seems doubtful whether a similar result in the case of a sale is justified. It is true that when the vendee parts with his money in reliance on a specific return he acquires a right *in specie*, which at once gives equity jurisdiction, and that the intervening insolvency of the vendor, which renders the legal remedy substantially inadequate, gives ground for equitable relief. But the whole spirit of the Bankruptcy Act seems to make the insolvency of the vendor the signal for proportionate distribution of his assets among all of his creditors, and nothing in the statute justifies a preference of specific over general claims. See WILLISTON, SALES, § 144. Nevertheless, the principal case has the support of a previous Supreme Court decision. *Hurley* v. *Atchison, T. & S. F. Ry. Co.*, 213 U. S. 126.

SALES — BREACH OF WARRANTY — WAIVER OF BREACH BY ACCEPTANCE. — In pursuance of a contract to buy and sell all the steers of a certain age then on the ranch of the seller, subject to a fifteen per cent cut, the seller delivered stock depreciated in weight from underfeeding. There was no express warranty in the agreement as to the condition of the cattle. The buyer, because of necessity occasioned by other contracts, accepted the cattle. He did not protest at the time and now seeks to recover damages for the breach. *Held*, that his right of action does not survive the unprotested acceptance of performance. *Cadwell* v. *Higginbotham*, 151 Pac. 315 (N. Mex.).

In ordinary contracts it is well settled that the mere acceptance of a defective performance does not bar the right to sue for a breach. See WILLISTON, SALES, § 485. But in sales and contracts to sell the law is in confusion. Where the

defect in the goods is one which cannot be easily discerned, acceptance never bars the buyer's right of action. *Buffalo Barbwire Co.* v. *Phillips*, 67 Wis. 129, 30 N. W. 295; *Miller* v. *Moore*, 83 Ga. 684, 10 S. E. 360; *Bell* v. *Mills*, 78 N. Y. App. Div. 42, 80 N. Y. Supp. 34. Where the defect is apparent, if the warranty is clearly express, the right to sue will survive a mere acceptance. *Day* v. *Pool*, 52 N. Y. 416; *Shupe* v. *Collender Co.*, 56 Conn. 489, 15 Atl. 405. The same rule applies where the warranty is implied or arises from the description of the goods, provided the sale is executed. *Munford* v. *Kevil*, 109 Ky. 246, 58 S. W. 703. But where title has not passed, considerable authority maintains that the buyer's right is destroyed by the mere acceptance of the goods. *Day* v. *Mapes-Reeve Construction Co.*, 174 Mass. 412, 54 N. E. 878; *Reed* v. *Randall*, 29 N. Y. 358. See *Gaylord Mfg. Co.* v. *Allen*, 53 N. Y. 515, 519. *Contra*, *English* v. *Spokane Commission Co.*, 48 Fed. 196. See *Watson* v. *Bigelow Co.*, 77 Conn. 124, 130, 58 Atl. 741, 742. The delivery of title to unspecified goods which do not correspond with the warranties of the contract, it is true, furnishes valid consideration to support an accord and satisfaction. See 19 HARV. L. REV. 208. But it is submitted that no waiver of the buyer's rights can occur unless he accept the defective performance as full satisfaction of the seller's obligation, which is by no means a necessary result of accepting defective performance. The question is therefore one of fact to be left to the jury in each case. See *Morse* v. *Moore*, 83 Me. 473, 481, 22 Atl. 362, 364. However, the failure to make protest within a reasonable time is strong evidence that the goods were received in full satisfaction, and the Sales Act, to obtain commercial certainty, has made such delay an absolute bar to recovery. See WILLISTON, SALES, § 484.

SCHOOL BOARDS — INJUNCTION AGAINST ABUSE OF DISCRETION — POWER TO PASS RULE EXCLUDING MEMBERS OF TEACHERS' UNION FROM SCHOOLS. — The Chicago Board of Education appointed some seven thousand teachers, many of whom were members of the Chicago Teachers' Federation, and later passed a rule prohibiting membership in this Federation on the part of the teachers. A taxpayer's suit was instituted to obtain an injunction against the enforcement of this rule. *Held*, an injunction will issue. *People ex rel. Fursman*, 3163 Chic. Leg. News 66 (Superior Court of Cook County, Ill.).

On exactly similar facts an Ohio court issued an injunction which was violated and attacked collaterally. *Held*, that the inferior court had no power to issue the injunction. *Frederick* v. *Owens*, 60 Oh. L. Bull. 538, 35 Oh. Circ. Ct. 538.

In general courts are slow to review the acts of an administrative board, deeming it essential to successful administration that if the board act within its powers, its decisions, no matter how unfortunate, should be final. *Fitzgerald* v. *Harms*, 92 Ill. 372; *Lem Moon Sing* v. *United States*, 158 U. S. 538; *United States* v. *Ju Toy*, 198 U. S. 253. School boards are given large discretion in the matter of hiring and dismissing teachers, the statutes generally providing that a teacher "may be dismissed for cause." See, for example, ILL. REV. STAT., ch. 122, §§ 133, 161. The right of the teacher to have written notice of the charge and to be heard in his defense gives that publicity which is an essential feature of administrative control. As the membership of teachers in a federation is conceivably productive of some slight degree of insubordination in the schools, it would seem to be a possible cause for dismissal. With this established, the fact that a school board acted unwisely in exercising its discretion, cannot give equity power of review. However, Illinois has previously gone to an unusual length in this direction. *Adams* v. *Brenan*, 177 Ill. 194, 52 N. E. 314. But elsewhere courts generally refuse to review the decisions of school boards in matters of discretion. *Lane* v. *Morrill*, 51 N. H. 422; *Wharton* v. *School Directors*, 42 Pa. St. 358; *Hysong* v. *School District*, 164 Pa. St. 629, 30 Atl. 482. Again, it is to be noted that the taxpayer's bill in the Chicago case